

Instant Run-Off Voting in the City of San Diego

Initial Analysis of Related Legal Issues

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Brief Overview of IRV

- Ranked ballot method that results in winner in single election
- Contemplates primary and any needed runoff election occurring on one ballot
- Voters rank candidates
 - Votes counted in rounds
 - If no candidate has 50%, candidate with fewest votes eliminated; those whose first choice is eliminated have votes transferred to 2nd choice; repeat process until one has 50%+
- Avoids cost and delay of runoff election

Charter City Can Implement IRV

- Conduct of City elections is municipal affair
- Charter cities can pass laws that supersede state laws regarding municipal affairs
- Charter cities can implement IRV for executive offices because there are no constitutional barriers
 - *People v. Butler*, 252 Cal. App. 2d Supp. 1053 (1967)
 - Charter cities have full power to legislate municipal affairs, with exceptions such as paramount or exclusive state concern

Other Charter Cities - Oakland

- Measure O (2006) Amends Charter for IRV
 - Confirms no state constitutional issues for Charter cities to implement IRV
 - Requires IRV to elect City officers at November election; eliminates June election
 - Used to elect Mayor, Council, City Attorney, Auditor, Board of Education; vacancies, too
 - Caveat: Alameda County Registrar of Voters first must be equipped to conduct IRV elections

Other Charter Cities - Berkeley

- Measure I (2004): Amends City Charter to use IRV for Mayor, Auditor, Council elections
- City Attorney confirms no legal issues
- Use only if:
 - County can handle IRV system
 - Does not preclude consolidation of elections
 - Does not increase costs
- Note: Berkeley City Charter historically allowed winner with 45% of the vote

Premise:

IRV Would Require Charter Changes

- Implementation of IRV could require numerous Charter changes
- Could put all on ballot at one time
- Would need careful consideration of which language to use; many sections implicated
- If looking to change only for special election, could be a simpler prospect

Premise

- To amend Charter, need vote of the People
- Could structure as rewrite of numerous Charter sections or possibly a new section devoted to IRV that repeals portions of others
- Requires Council approval to revise related Municipal Code election procedures

San Diego City Charter

- Section 10: City Council Elections
 - “Municipal primary elections” for council members will be held on the “same date in each election year as the California State primary election”
 - “General municipal election for these offices shall be held on the same date as the California State general election for that year”
 - Contemplates 2 elections: primary + later runoff

San Diego City Charter

- Section 10: Mayor and City Attorney
 - “Municipal primary election” for offices of Mayor and City Attorney shall be held on same date as California primary election
 - “General municipal election” for offices of Mayor and City Attorney shall be held on same date as California state general election
 - Contemplates a primary + later runoff election

Elections for Mayor

- Charter Section 265: Strong Mayor System
 - Supersedes Section 10 for trial period
 - Reconfirms Mayor elected through a primary and a general election
 - Section 265(e)
 - Rules for filling vacancy in office of Mayor
 - Special run-off within 49 days of first special election
 - Two candidates with highest vote totals are “only” candidates for runoff

City Attorney Elections

- Charter Section 40
 - Governs City Attorney's powers and duties
 - Explicitly states City Attorney elected
“in the manner prescribed by Section 10 of
this Charter”
 - References both a municipal primary and
general election

San Diego City Charter

- Section 10: All “elective officers”
 - Contemplates “all elective officers” to be nominated at a “municipal primary election”
 - Implication is that they are nominated to then face a runoff if there is no one with a majority vote

San Diego City Charter

- Section 10, continued:
- In the event no candidate receives a majority of votes cast at primary, “the two candidates receiving the highest number of votes for a particular elective office at said primary shall be the candidates, and only candidates, for such office and the names of only those two candidates shall be printed upon the ballots to be used at the general municipal election.”

Summary: San Diego City Charter

■ Section 10

- Clearly contemplates the primary and later runoff system
- Contemplates only 2 candidates advancing after initial primary vote

Refers to Two Elections

- Charter replete with references to 2 elections:
Charter Sections 12(b), (c), (d)
 - Refers to a “municipal primary and general election” repeatedly for Mayor, Council members
 - Section 10 contemplates two-election system
 - Must also be harmonized with Section 12g:
 - Refers to a primary and general election for new seats after any redistricting

Special Elections

- Section 10: Special Elections
 - “All other municipal elections which may be held under this Charter shall be known as special municipal elections.”

Runoff election for Special Election

■ Section 12 (h)

- ii: If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within forty-nine (49) days of the first special election, unless there is a regular municipal or statewide election scheduled to be held within ninety (90) days of the proposed special run-off election date
 - Contemplates a second election not on the same day
 - Read with the rest, does not allow a same-day runoff

Runoff election for Special Election

- Charter Section 12(h) (continued):
 - Additional complication for special election:
 - “The two (2) candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the only candidates for the vacant Council seat and the names of only those two (2) candidates shall be printed on the ballot for that seat.”
 - Does not contemplate all but 1 candidate advancing in IRV balloting to a second round

Municipal Code

- City's Election Procedures: Article 7
 - Definitions section
 - Write-in candidate section
 - Permitted only in primary, so could be a factor
 - Contemplates only 2 candidates in runoff
 - Tie-vote sections, references 2 elections
 - But note: Recall procedure differs
 - Recall and election done at once
 - Highest vote-getter wins, even if not a majority

Summary: Legal Ramifications

- Requires a Charter amendment through vote of the People
- Requires rewrite of numerous Charter sections or possibly a new section devoted to IRV that repeals portions of others
- Requires Council approval to revise related Municipal Code election procedures

Not a new idea?

- FairVote notes a 1968 Supreme Court decision:
 - Issue: Ohio's restrictive ballot access, attempting to keep third parties off ballot because, with 3 candidates, one may receive less than a majority to win.
- Justice Harlan in *Williams v. Rhodes*, 393 U.S. 23 (1968)
 - “It seems clear to me, however, that many constitutional electoral structures could be designed ... Alternatively, the voter could be given the right, at the general election, to indicate both his first and second choice for the Presidency – if no candidate received a majority of first-choice votes, the second-choice votes could then be considered.”